

New Models for Coastal Resource Law and Governance in Developing Countries

Jason M. Patlis

Environmental Law and Law Development Associates

29 January 2003

The Next Few Minutes

Descriptive Analysis

- What is happening: challenges and opportunities

Normative Analysis

- What should happen: law reform in theory

New Initiatives

- What can happen: law reform in practice

Future Initiatives

Trends in Law Reform and Governance

- Overall
 - 63 of 75 developing countries with populations greater than 5 million are decentralizing
 - Unitary versus federal systems
 - Authority often goes without capacity
 - Finance does not often follow function
- Consequences
 - Increased accountability, transparency, responsiveness?
 - Recent WB studies pointing to increased corruption at local level

Challenges to Law Reform and Governance

- Implementing agencies
 - Poor capacity/Lack of funding
 - Corruption
- Civil society
 - Disenfranchisement
 - Lack of knowledge
- Donor agencies
 - Parochial interests
 - Deliverables
- Systemic legal issues
 - Adjudicatory, administrative, legislative
 - Resource allocation

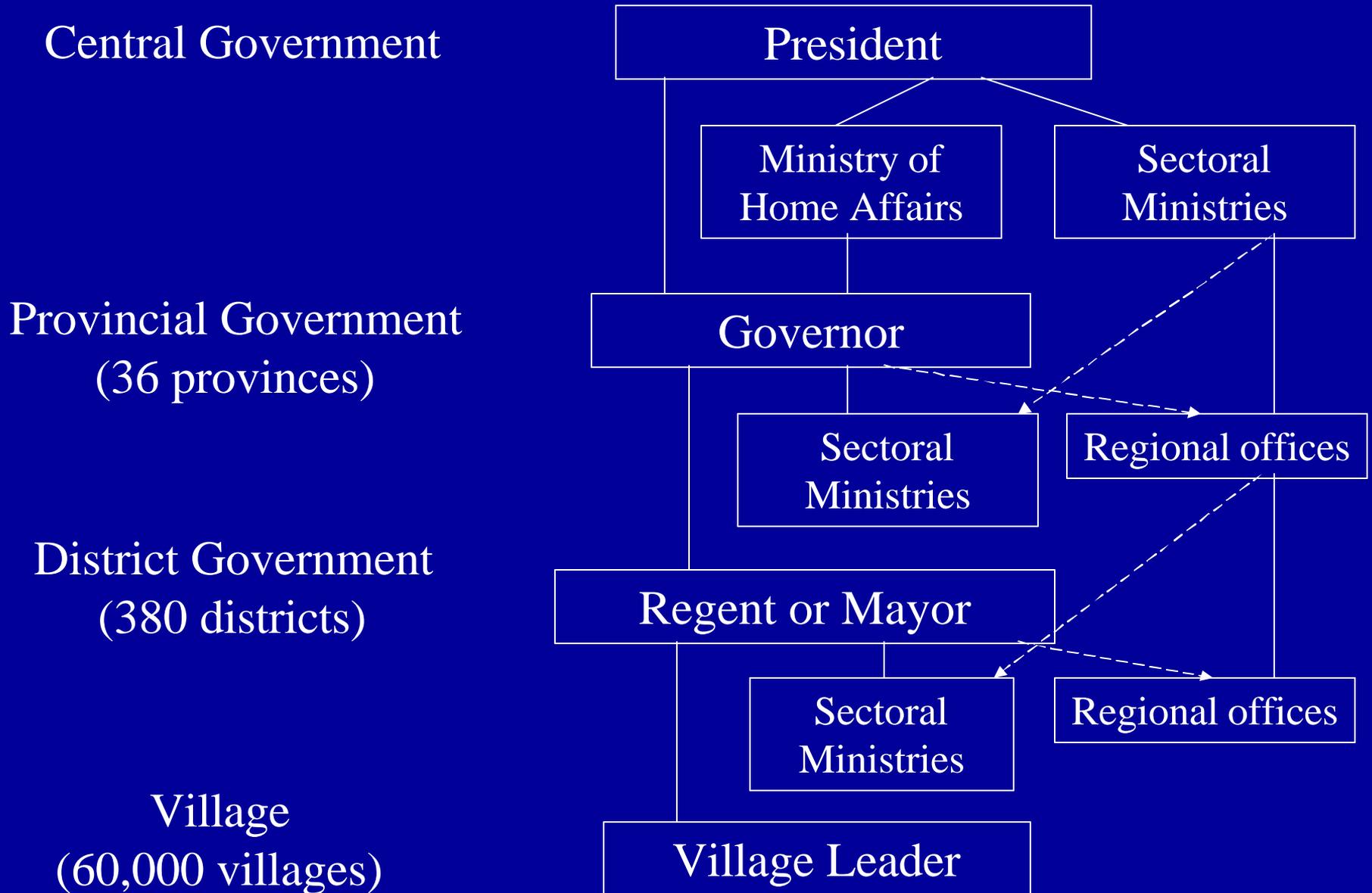
Challenges to Law Reform: Statutory and Administrative Law

- Statutory interpretation
 - Vagueness and overbreadth
- Statutory construction
 - General rules of construction
 - Higher laws over lower laws
 - Later in time over earlier in time
 - More specific over more general
 - Implied repeals
- Statutory resolution
 - Executive action vs. judicial action
 - Doctrine of precedence

Opportunities for Law Reform and Governance

- Government
 - Shift from central to regional bodies
 - Shift from administrative to legislative bodies
 - Shift from ideals to realities
- Civil society
 - Rise of NGOs
 - Free press
 - Greater access and awareness
- Private sector
 - Financial leverage for reforms
 - Partnerships

Case Study: Indonesia



Case Study: Decentralization in Indonesia

- The central government: advisor
- The district: the new power center
 - Managerial and financial authority
 - Caveats: capacity, administrative costs
- The province: the wildcard
 - Authority for cross-jurisdictional issues
 - Authority for issues that district does not yet have, or cannot have, capacity to manage
 - Caveat: little funding available

Case Study: Decentralization in Indonesia

- General: Financial distribution of resources
 - 80% to regions; 20% to central
 - Of the 80%, 16% to provinces; 64% to districts
- Coastal: Fisheries revenues divided equally among all districts nationwide, regardless of point of origin
 - A true commons
- Forestry: District of origin gets 32%
 - Return to resource: Reforestration Fund

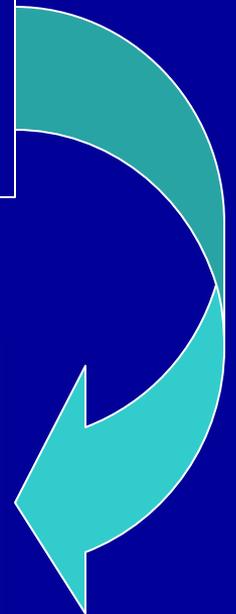
Overall Approach to Decentralized Coastal Governance

Local laws based on experience

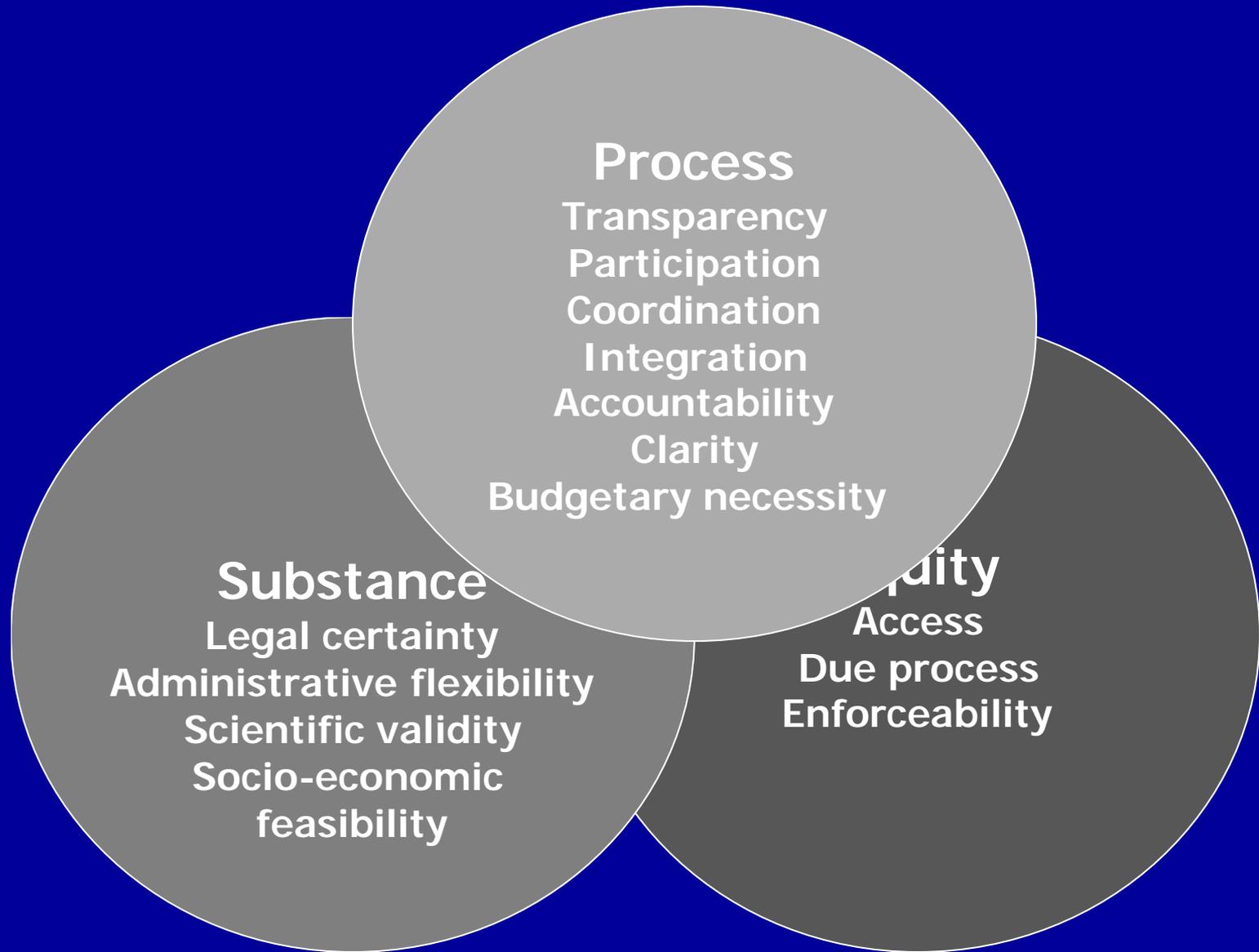
- Purpose: Scaling up
- Means: Detailed provisions

Central law based on standards

- Purpose: Scaling down
- Means: Performance standards through incentives/requirements



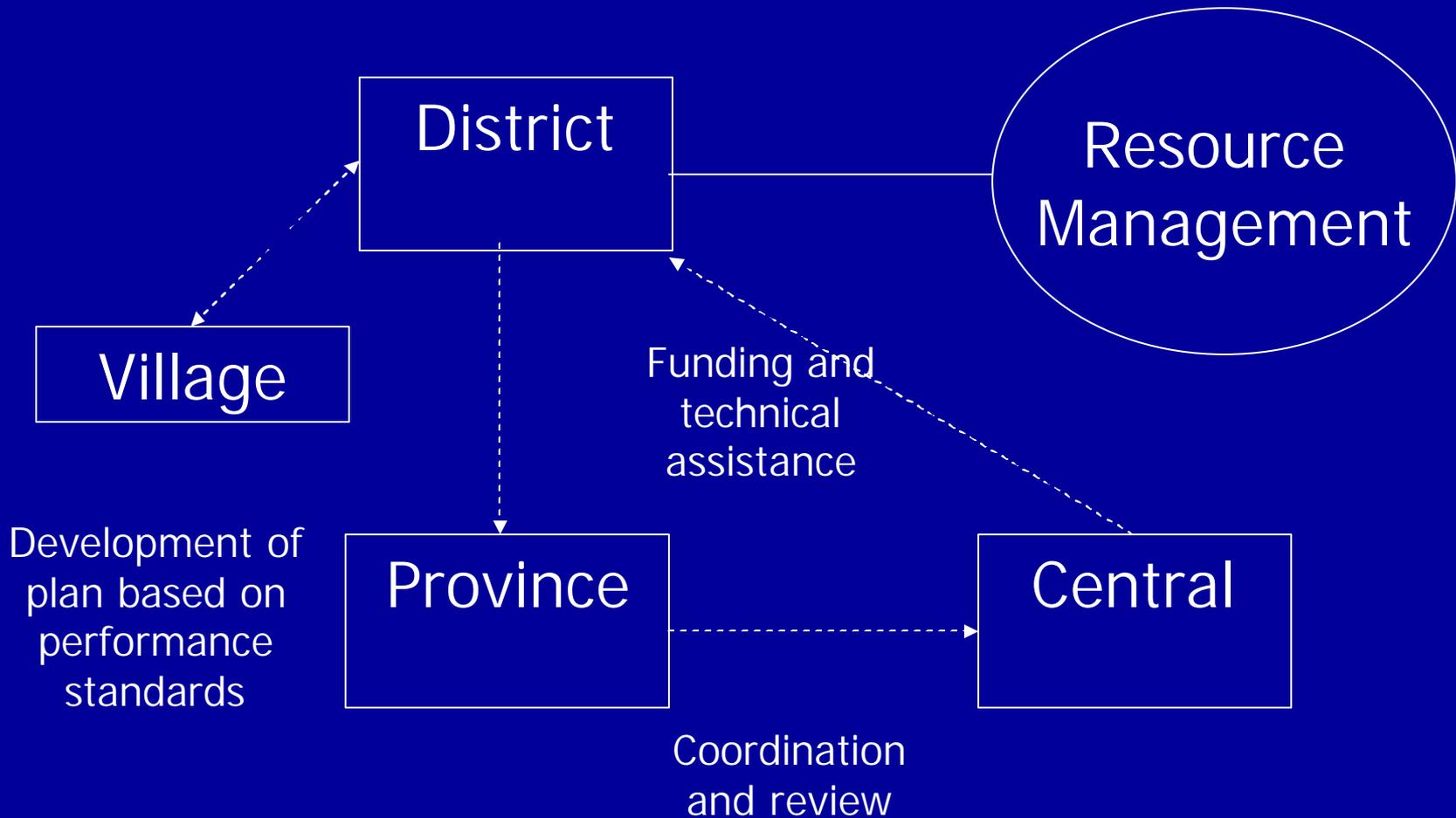
Principles of Law Development



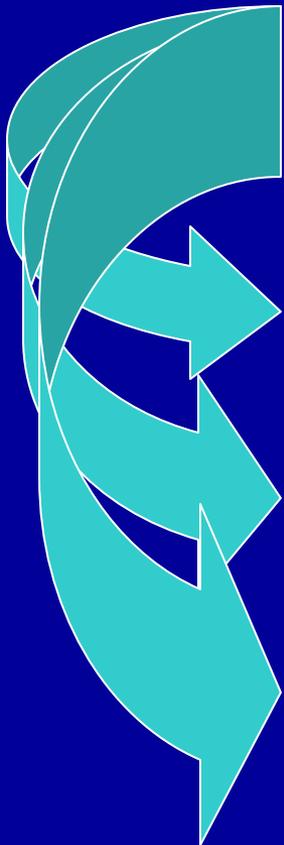
Mechanics of Law Development

- Scoping analysis/ Needs assessment
- Preparation of research report
- Drafting legislation
- Review and revisions
- Enactment
- Implementation
 - Monitoring, evaluation, reporting, revision

Building a Legal Framework at the Central Level



Building a Legal Framework at the Central Level

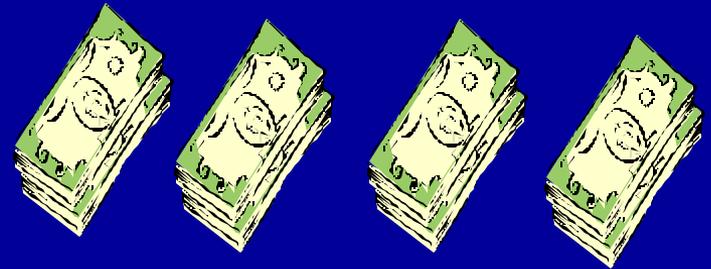


If:

District follows standards issued by the central government

Then:

Financial assistance

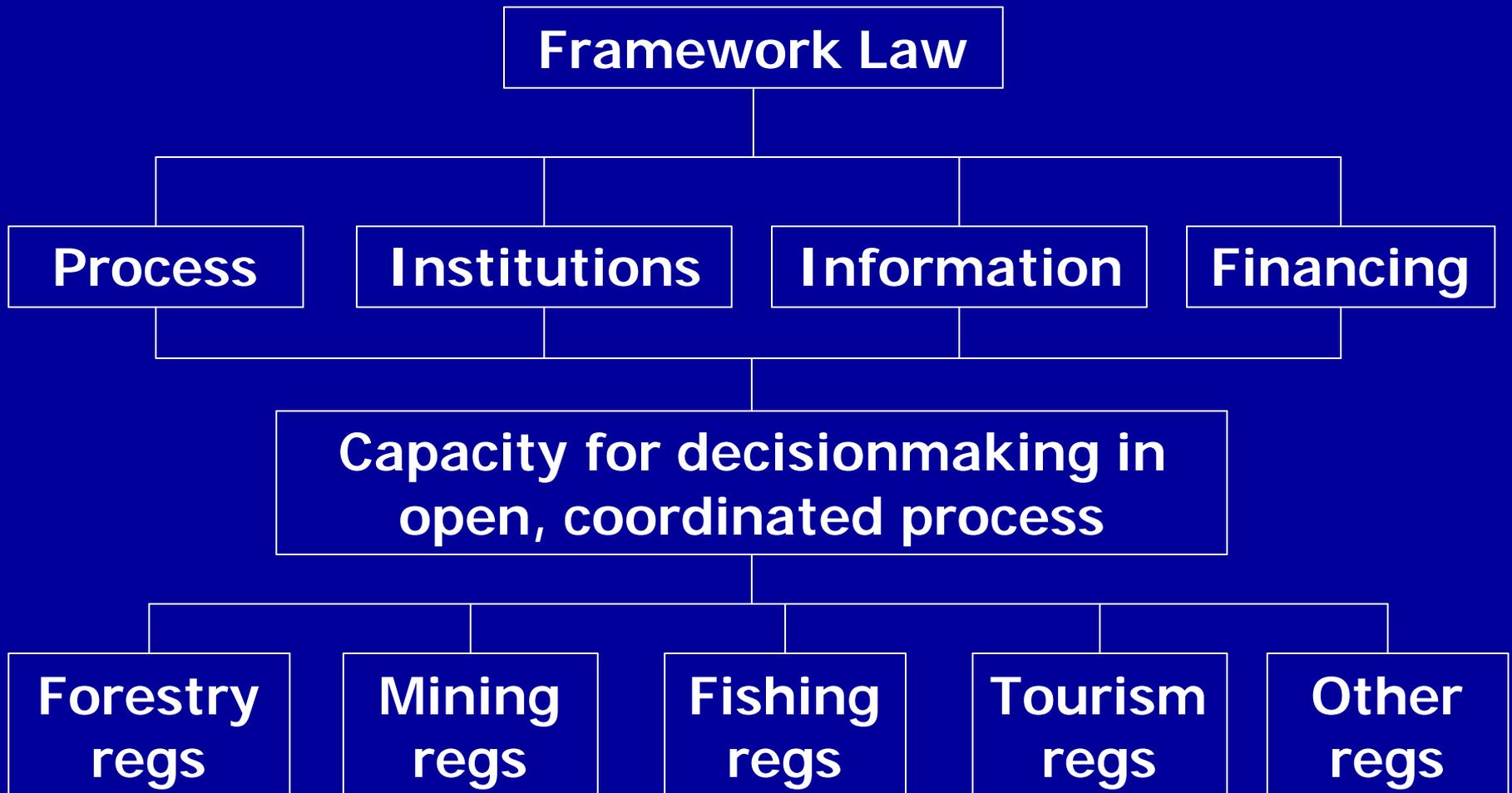


Technical assistance

Adherence to local plan by central government



Building a Legal Framework at the Local Level



Theory into Practice: Local Law Reform in Indonesia

Minahasa Coastal Management Law: Process

- Perda began with multi-party commitment
- Focused on MPA replication
- DPRD members visited villages
- Perda redrafted as comprehensive management tool
- Pared back into planning tool
- Public review again
- Mass media campaign
- Enactment

Theory into Practice: Local Law Reform in Indonesia

Minahasa Coastal Management Law: Substance

- Key definitions/terms
 - Scope of law
 - Participation
- Key provisions
 - Designation of lead agency
 - Establishment of coordinating body
 - Clarification of authority at village level
 - Criteria for activities at village level
- Key innovations
 - Funding, funding, funding
 - District authority transferred to village
 - Non-regulatory

Theory into Practice: Central Level

Draft National Law on Coastal Management: Process

- Preparation of Academic Study
 - Public process
 - Comprehensive background and analysis
 - Consideration of alternatives and recommendations
 - Summary of comments/meetings
- Distribution of Academic Study
 - 1500 hardcopies, 20 provinces, 50 districts
 - CD-ROM
 - Website postings

Theory into Practice: Central Level

Draft Law on Coastal Management: Process

- Development of the Law
 - Formation of drafting team
 - All drafting meetings documented
 - Stakeholder meetings prior to clean draft
 - Circulation of draft with no chapters/articles
 - Minutes of public meetings published/circulated
 - Beginning new consultation process with NGOs

Theory into Practice: Central Level

Draft Law on Coastal Management: Process

- Three-track public consultation process
 - Formal process by Ministry
 - Regional meetings in 9 cities
 - Interdepartmental meetings
 - Submission of law to President/DPR
 - Collaborative process by NGOs
 - LSMs run meetings, feed comments to formal process
 - Follow up in areas covered by formal process
 - Reach areas not covered by formal process
 - Continue process beyond Ministry role
 - Mass media campaign

Theory into Practice: Central Level

Draft Law on Coastal Management: Substance

- Institutional arrangements
 - New coordinating body
 - Clarification of authorities among agencies
 - Community empowerment/recognition of adat
 - Outreach and education through new programs
- New accreditation program
 - Voluntary, incentive based program to certify district plans that comply with central government standards
- Standards on coastal management
 - Both required and voluntary standards

Indonesia: Questions For the Future

- Recentralization?
- Law development?
 - 'Season of the perda'
 - Substance follows process; process over product
- Minimum performance standards?
 - New role for central government
 - Role of non-government organizations
 - Monitoring, compliance, enforcement
- Dedicated funding and reinvestment?

Beyond Indonesia: Final Thoughts

- Inherent challenges in integrating law reform and natural resource management
 - Law reform focuses on electoral process, human rights and economic issues
 - Natural resource management focuses on project-based research/goals
- Inherent nature of donor and lender institutions
 - Tangible, quantifiable deliverables
 - Sectoral, competitive
- Signs of change
 - Development aid increasing for rule of law, democracy, anti-corruption
 - Consensus to move into governance and focus on institutionalization (recent US AID/CRC workshop)
 - Awareness of interrelationship increasing (WSSD)

A Few Recommendations

- Explicitly incorporate natural resource management into rule of law and governance projects
- Redefine deliverables of donors/lenders
- Focus on law-making, not policy-writing
- Move to the local level
- Look for new alternatives rather than fix bad systems (don't chase good money after bad)